



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 14 2009

Mr. Pete J. Serio, Chief
Regulatory Functions Branch
New Orleans District
U.S. Army Corps of Engineers
P.O. Box 60267
New Orleans, LA 70160-0267

Dear Mr. Serio:

This is in response to a Corps of Engineers request for the Environmental Protection Agency (EPA) position on the proposed Phase III expansion of the Chef Menteur Pass Mitigation Bank, Orleans Parish, LA. EPA would oppose Phase III of this mitigation bank until Phases I and II are brought into compliance with the terms of the associated mitigation bank instrument (MBI).

EPA supported both Phases I and II of the Chef Menteur Pass Mitigation Bank. If implemented according to plan, this mitigation bank has the potential to effectively offset unavoidable wetland impacts. To date, however, the sponsor of the Chef Menteur Pass Mitigation Bank has not complied with the terms of the MBI. Specifically, implementation of marsh creation activities has not yet commenced, despite the MBI requirement that such work begin within one year of initial release of mitigation credits. (Initial credit release for both phases occurred in 2007.) EPA opposes expanding a mitigation bank that is not in compliance with the terms of its MBI.

Since the signing of the MBI for this mitigation bank, the sponsor has modified his marsh creation plan, asserting that a land-based staging area is now necessary. (No such land-based operation was mentioned to EPA during the review of Phases I and II.) To date, insufficient information has been provided to demonstrate that water-based construction is not a viable option. (We would note that approximately 140 acres of initial mitigation credits from Phases I and II have already been released for sale, thereby providing a substantial source of potential marsh construction funding.) If water-based construction is proven to be impracticable, the sponsor would need to demonstrate that the proposed land-based staging area is indeed the least environmentally damaging practicable alternative.

Again, EPA supported the establishment of Phases I and II of this mitigation bank. Implementation of the marsh creation activities covered by these two phases could provide valuable insight into the potential effectiveness of the larger Phase III proposal. However, until the sponsor complies with the terms of the MBI for the first two phases and we have had an opportunity to gauge the effectiveness of the associated marsh creation activities, we would not support Phase III. To that end, we remain committed to working with the sponsor to resolve any

outstanding issues pertaining to implementation of Phases I and II.

Thank you for your consideration of these comments. We look forward to working with you to resolve these concerns as expeditiously as possible. Should you have any questions or wish to discuss this matter further, please contact John Ettinger of my staff at (504) 862-1119.

Sincerely,

A handwritten signature in cursive script, reading "Sharon Fancy Parrish".

Sharon Fancy Parrish
Chief
Wetlands Section

cc: USFWS, Lafayette, LA
NMFS, Baton Rouge, LA
LDNR, Baton Rouge, LA
LDWF, Baton Rouge, LA